APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,532	12/12/2003	Reiner Sailer	YOR920030607US1 (163-26)	9714

24336 7590 01/19/2010		

TUTUNJIAN + BITETTO, P.C.
20 CROSSWAYS PARK NORTH
SUITE 210
WOODBURY, NY 11797

EXAMINER
ENGLAND, DAVID E

ART UNIT	PAPER NUMBER
2443	

MAIL DATE	DELIVERY MODE
01/19/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	10/734,532	SAILER ET AL.
	Examiner	Art Unit
	DAVID E. ENGLAND	2443

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 January 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

       Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b)☐ They raise the issue of new matter (see NOTE below);
   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.
      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

   11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
      See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/David E. England/
Primary Examiner, Art Unit 2443

Continuation of 11. does NOT place the application in condition for allowance because: As to Applicant's arguments, the examiner will map to the areas and teachings and describe how the claims are being interpreted and how the prior art reads on the claims.

With regard to Deverill teaching "measuring code as the code is being loaded into memory and before execution of the code", the interpretation of "code" and how one is able to actually measure it comes into question. In the broadest aspect of the claims, code can be interpreted as any data in a message that tells a computer to perform an action or even further, any data that a computer can read is code. Therefore, in order to actually measure data before it is executed or being loaded into memory, one can look to how it is being received, or in Deverill's case, how long it is taking data, i.e., "code", to enter memory, i.e., latency. Latency is the measurement of the delay in data or the code takes to get into a computer or delivered. It is well known in the art that in order for a message to "enter" a computer it must be stored in buffers or sorts before being processed. Therefore, Deverill teaches the limitation in it's broadest sense with regards to the interpretation of code being any transmission that has protocol information in it, which is all and any transmission over a Lan or Wan, and how long that transmission takes to get to the user.

With regard to Deverill teaching "measuring one or more parts of a server execution environment such that measurements are taken which result in a unique fingerprint for each respective selected part", the interpretation of "execution environment" and "unique fingerprint" is questioned. It is well known that a server execution environment is a VERY broad term and can range from anything regarding processing time, topology, protocols, and transmission characteristics between two devices, much like latency for example. As for the unique fingerprint, the Applicant's specification and claims state the 'Measurements' that are taken result in a unique fingerprint, or in other words, the measurement is unique. The use of the term "fingerprint" merely drives home the fact that the measurement is unique in that instance, much like the type of timestamp stated in the prior art. The Applicant's specification states no specific definition of what fingerprint adds to the measurement and therefore one must take the ordinary definition which is that a fingerprint is a unique mark. Therefore, the claim merely states that the measurement is unique, which as stated before a type of timestamp is unique since it is very difficult to have the same time stamp repeatedly taken.

With regards to Deverill not teaching an aggregate value it is clear in column 8 of Deverill that the unique measurement that is taken is aggregated into a unique identifier, which is still an aggregate value as stated in the claim.

Applicant's other remarks repeat what was previously argued above but with regard to the other references. This has been addressed above and is therefore moot. Applicant further states that Deverill is not "reasonably pertinent" to the problem addressed by the present invention. As to this remark, it is inconsequential since it is the combination of Deverill, Snapp, Ploetz and Baxter that is used to reject the claims and therefore one cannot show novelty by attacking references individually .

Applicant is always invited to contact the Examiner for an interview to agree on claim language and interpretations of the art.